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In the Supreme Court of the United States

OCTOBER TERM, 1990

EXXON CORPORATION, PETITIONER

v.

CENTRAL GULF LINES, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether an agent who procures and pays for necessary maritime supplies for a vessel in maritime commerce is entitled to assert a maritime lien against the vessel.

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in the scope of admiralty jurisdiction, both in its capacity as an owner and operator of ships, and in its role as a major shipper. Although maritime liens do not lie against vessels owned by or operated for or by the United States (46 U.S.C. App. 741; 46 U.S.C. App. 788), in personam actions may be brought against the United States in all cases where admiralty jurisdiction would lie if the vessel were privately owned or operated (46 U.S.C. App. 742). Thus, the decision in this case may have a significant impact on the availability of in personam actions in admiralty against the United States.

Moreover, the United States has a general interest in the proper and uniform application of the laws governing admiralty jurisdiction. In response to the Court's invitation at the petition stage of this case, the Solicitor General filed a brief urging that the petition be granted.

STATEMENT

1. This case involves a vessel, the M/V Green Harbour ex William Hooper (the Hooper); the vessel's owner, respondent Central Gulf Lines, Inc.; the vessel's charterer, Waterman Steamship Corporation (Waterman); and Waterman's fuel supplier, petitioner Exxon Corporation.

Petitioner served for more than four decades as the exclusive world-wide supplier of marine fuel for Waterman's vessels. Under the terms of their agreement, Waterman notified petitioner when a Waterman vessel needed fuel. Petitioner then either delivered the fuel to the vessel directly, or (where petitioner had no local delivery facilities) arranged with a local supplier to provide the fuel. When a local supplier was used, petitioner paid the supplier and then billed Waterman. In these situations, the practical effect of the agreement was that the fuel supplier relied on petitioner's credit rather than Waterman's. Pet. App. A23.

The local supplier used by petitioner at the port in Jeddah, Saudi Arabia, was Arabian Marine Operating Co., Ltd. (Arabian Marine). The agreement between Arabian Marine and petitioner stated that petitioner would "solicit and arrange" for the sale of marine fuel to vessels calling at the port of Jeddah; that Arabian Marine would supply this fuel and petitioner would pay for it; and that Arabian Marine

would pay petitioner a commission. Petitioner never had title to the fuel; it passed directly from Arabian Marine to the receiving vessel. Pet. App. A24-A25.

2. On October 26, 1983, Arabian Marine delivered 4,242.47 tons of marine fuel to the Hooper, pursuant to the agreement between petitioner and Waterman and the agreement between petitioner and Arabian Marine. Petitioner paid Arabian Marine for the fuel, and in November 1983 billed Waterman for its $763,644 cost. Pet. App. A24-A25.

The bill to Waterman was not paid. Instead, on December 1, 1983, Waterman sought reorganization under Chapter 11 of the bankruptcy laws. During reorganization proceedings, respondent agreed that, should a court hold the Hooper liable in rem for the cost of the fuel, respondent would assume personal liability for that cost. Respondent provided petitioner with a letter of credit as security for this promise. Pet. App. A25.

After a reorganization plan for Waterman was confirmed in June 1986, petitioner was permitted to pursue its claim for the cost of supplying marine fuel to the Hooper. Pet. App. A25.[1] Accordingly, petitioner commenced this lawsuit in federal district court against both respondent and the Hooper. Petitioner asserted that its agreement with Waterman to procure fuel in Saudi Arabia fell within the district court's admiralty jurisdiction. Petitioner therefore claimed to have a maritime lien on the Hooper pursuant to the Federal Maritime Lien Act, 46 U.S.C. 31342.[2]

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[1] Petitioner received certain cash and stock dividends under the reorganization plan; any judgment recovered in this action would be reduced to reflect these receipts. Pet. App. A25.

[2] Formerly 46 U.S.C. 971 (1982). See Pet. App. A26.

3. The district court concluded that there was no admiralty jurisdiction over petitioner's claim, and that without such jurisdiction there could be no maritime lien. Pet. App. A27-A28. The court noted that "[w]hile admiralty jurisdiction provides 'fairly complete coverage of the primary operational and service contracts of the shipping industry,' there still exist 'a few anomalous exceptions'" (*id.* at A28, quoting G. Gilmore & C. Black, *The Law of Admiralty*, § 1-10 (2d ed. 1975)). One of these "anomalous exceptions," the court continued, is the rule that general agency contracts—agreements to arrange for the provision of supplies and services to a vessel—fall outside the scope of maritime jurisdiction. The court observed (Pet. App. A28) that in *Peralta Shipping Corp.* v. *Smith & Johnson (Shipping) Corp.*, 739 F.2d 798 (1984), cert. denied, 470 U.S. 1031 (1985), the Second Circuit adhered to this exception, holding itself bound by this Court's decision in *Minturn* v. *Maynard*, 58 U.S. (17 How.) 476 (1854). Applying "the principles enunciated in *Peralta*" to the facts of this case (Pet. App. A29), the district court concluded that the agreement whereby petitioner arranged for the provision of fuel to Waterman's vessels at Jeddah constituted an agency contract (*id.* at A29-A30); that the services supplied were strictly "shoreside" (*id.* at A30); and that there was no legitimate basis for distinguishing the general agency, or husbanding, contract at issue in *Peralta* from the agreement here (*id.* at A31).

In a subsequent opinion (Pet. App. A3-A21), the court denied petitioner's motion for reconsideration. The court reiterated that "Exxon wore its agency hat when it procured [marine fuel] for the Hooper in Jeddah," and that "the locus of Exxon's relationship with Waterman was the United States, not the dock

in Jeddah." *Id.* at A6. Accordingly, the case fit within the exception for general agency contracts forged by this Court in *Minturn*. The court observed that although the *Minturn* rule was an "anomalous exception to the broad coverage of maritime jurisdiction [which] had 'suffered some erosion in other circuits'" (*id.* at A11), the Second Circuit in *Peralta* had refused to depart from *Minturn*, absent action by this Court. *Id.* at A11-A12. The district court declined "to do what the Second Circuit refused to do in *Peralta*." *Id.* at A12.

The district court rejected petitioner's argument that in procuring fuel for Waterman it was acting as a special and not a general agent. Pet. App. A13. The court determined that the forty-year relationship between Waterman and petitioner, and petitioner's "quite broad" authority under its agreement with Waterman, established petitioner as Waterman's general agent. It observed that the Second Circuit had refused to distinguish special agency agreements from general ones; and that in any event, special agents that provide preliminary services fall outside admiralty jurisdiction. *Id.* at A13-A14.[3] The court spe-

[3] Commencing at least as early as 1881, in *The Thames*, 10 F. 848 (S.D.N.Y. 1881), courts in the Second Circuit embraced the rule that contracts of a "preliminary" nature are outside federal admiralty jurisdiction. Ultimately, the holding of this Court in *Minturn* and the rule declared in *The Thames* became entwined. In *Cory Bros. & Co.* v. *United States*, 51 F.2d 1010, 1012 (1931), the Second Circuit explained *Minturn* as involving a preliminary service contract.

The district court in this case, observing that "the agency exception to maritime jurisdiction is less of an anomaly when viewed as a subset of the preliminary contract doctrine," rejected petitioner's invitation to "disentangle the preliminary contract rule from the general agency rule." Pet. App. A16-A17. See *id.* at A29 (quoting *The Thames*).

cifically ruled that the "services performed by [petitioner at Jeddah] were merely preliminary" (*id.* at A17), and that, accordingly, the contract at issue was not maritime, regardless of how the agency was characterized.[4]

4. The court of appeals affirmed, "substantially for the reasons given in [the district court's] two thorough opinions" (Pet. App. A2).

SUMMARY OF ARGUMENT

1. This Court's decision in *Minturn* v. *Maynard* should be overruled. The Court's cryptic opinion in that case, which has been variously interpreted by the lower courts ever since, may have rested on three notions of admiralty jurisdiction: the tidewater exception to that jurisdiction; the "hypothecation" requirement (that one claiming on a contract must have a lien interest in the vessel before the contract would be considered maritime); and the view that a demand for a balance on accounts must be pursued in an action in *assumpsit* in a common law court. Each of these notions has been squarely rejected by this Court. Thus, whatever the basis for the decision may have been in 1854, that basis no longer exists.

Moreover, there is no agreement in the lower courts on the current meaning or vitality of the *Minturn* holding. The Second Circuit views the holding as requiring the exclusion of all agency agreements from the reach of admiralty jurisdiction. Other circuits appear to view the decision only as barring an action for "an accounting as such" (*Hadjipateras* v. *Pacifica*,

[4] The district court also rejected petitioner's claim that it was entitled to an admiralty lien by virtue of subrogation (Pet. App. A18-A21). Petitioner does not seek further review of this claim.

S.A., 290 F.2d 697, 703 (5th Cir. 1961)), or as excluding only certain kinds of agency agreements. Thus, a determination that *Minturn* is no longer binding precedent will not only eliminate an anomaly in maritime law and help rationalize admiralty jurisdiction, it will also eliminate widespread confusion as to the present impact of the Court's holding.

2. If this Court's decision in *Minturn* is overruled, the question will remain as to what agency contracts fall within the reach of admiralty jurisdiction. Some contracts—including agency contracts—are sufficiently remote from maritime commerce that they do not fall within that reach, and the limits of the jurisdiction must be defined in the context of particular cases. But whatever those limits may be, we do not believe they are exceeded here, since this agency agreement involves a suit by an agent for reimbursement for the cost of supplying a vessel with necessary marine fuel. The Court should therefore determine that, on the record in this case, admiralty jurisdiction has been established.

ARGUMENT

I. *MINTURN* v. *MAYNARD* SHOULD BE OVERRULED

Minturn v. *Maynard*, *supra*, created an oddity of federal admiralty jurisdiction; its historical antecedents have been eroded, and its serves no continuing purpose in current maritime law. It is beyond dispute that an action seeking to recover the cost of supplying fuel to a vessel—the purpose of this suit—is within a federal court's admiralty jurisdiction. Yet, the rule of *Minturn* prevents the assertion of admiralty jurisdiction simply because the owner's agent, rather than a third party, seeks payment for the fuel.[5] This Court, in the years since *Minturn* was decided, has refused to make admiralty jurisdiction turn on such artificial distinctions. Accordingly, the rule that general agency contracts are outside admiralty's reach should be abolished.

A. The Historic Antecedents Of *Minturn* No Longer Justify Its Result

Early in the nineteenth century, Justice Story observed that the admiralty jurisdiction of the United States includes "all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea." *De Lovio* v. *Boit*, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3776). Whether a contract is governed by maritime law thus depends on the subject matter of the agreement.

[5] For example, in this case, petitioner's claim for recovery under its contract with Waterman for fuel supplied from its own facilities in New York fell within admiralty jurisdiction (Pet. App. A33), although deliveries under the same contract through the local supplier in Jeddah did not.

See *North Pacific S.S. Co.* v. *Hall Bros. Marine Ry. & Shipbuilding Co.*, 249 U.S. 119, 125 (1919); *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 736 (1961). Nonetheless, as this Court has noted, "[t]he boundaries of admiralty jurisdiction over contracts—as opposed to torts or crimes—being conceptual rather than spatial, have always been difficult to draw." *Kossick* v. *United Fruit Co.*, 365 U.S. at 735. See S. Friedell, *Benedict on Admiralty* § 183, at 12-8 (7th ed. 1989). It is not surprising, therefore, that decisions marking this boundary are often difficult to reconcile.[6] See *Sisson* v. *Ruby*, 110 S. Ct. 2892, 2900, 2901 & n.4 (1990) (Scalia, J., joined by White, J., concurring in result and noting "[t]he impossibility of drawing a principled line with respect to what, in

[6] It has been held, for example, that a contract to repair a vessel is maritime, *New Bedford Dry Dock Co.* v. *Purdy*, 258 U.S. 96 (1922), yet a contract to build a vessel is not, *Thames Towboat Co.* v. *The Schooner Francis McDonald*, 254 F.2d 242 (1920), *People's Ferry Co.* v. *Beers*, 61 U.S. (20 How.) 393 (1857); that a policy of insurance on a vessel is maritime, *Wilburn Boat Co.* v. *Fireman's Fund Insurance Co.*, 348 U.S. 310 (1955), *Insurance Co.* v. *Dunham*, 78 U.S. (11 Wall.) 1 (1870), although a contract to obtain such insurance is not, *F.S. Royster Guano Co.* v. *W.E. Hedger Co.*, 48 F.2d 86 (2d Cir.), cert. denied, 283 U.S. 858 (1931); *Marquardt* v. *French*, 53 F. 603 (S.D.N.Y. 1893); and that a charter party is a maritime contract, *Fisser* v. *International Bank*, 175 F. Supp. 305 (S.D.N.Y. 1958), but a broker's contract to secure such a charter party is not, *Cory Bros. & Co.* v. *United States*, 51 F.2d 1010 (2d Cir. 1931); *Brown* v. *West Hartlepool Steam Navigation Co.*, 112 F. 1018 (5th Cir. 1902). Moreover, while a lease of cargo containers for use on a ship is maritime, *CTI-Container Leasing* v. *Oceanic Operations*, 682 F.2d 377 (2d Cir. 1982), as is a contract to purchase equipment for a ship, *e.g.*, *Radiomarine Corp.* v. *Gulf Northern Co.*, 394 F. Supp. 381 (E.D. Mo. 1975), a contract to purchase a vessel is not, *Economou* v. *Bates*, 222 F. Supp. 988 (S.D.N.Y. 1963).

addition to the fact that the contract relates to a vessel * * * is needed in order to make the contract itself 'maritime.' ").

The source of one of the most idiosyncratic of admiralty's jurisdictional rules is this Court's one-page decision in the 1854 case of *Minturn* v. *Maynard*, 58 U.S. (17 How.) 476. Much criticized, *Minturn* has spawned an "agency exception" to the general rules governing maritime contracts. Even when a contract's subject matter is indisputably maritime, *Minturn* has been interpreted as proscribing federal admiralty jurisdiction if the contract is one of agency.

The libellant in *Minturn*, who was both a general agent and a broker, sued in personam to recover from a vessel's owners money he had spent in procuring ship's services and supplies. Finding "nothing in the nature of a maritime contract in the case," 58 U.S. (17 How.) at 477, this Court dismissed the suit in an extremely brief opinion. The Court's entire explanation for this conclusion was as follows (*ibid.*):

> The libel shows nothing but a demand for a balance of accounts between agent and principal, for which an action in *assumpsit*, in a common law court, is the proper remedy. That the money advanced and paid for respondents was, in whole or in part, to pay bills due by a steamboat for repairs or supplies, will not make the transaction maritime, or give the libellant a remedy in admiralty. Nor does the local law of California, which authorized an attachment of vessels for supplies or repairs, extend to the balance of accounts between agent and principal, who have never dealt on the credit, pledge, or security of the vessel.

The decision in *Minturn* may well have turned on restrictions brought over from English admiralty practice—principally the tidewater exception to maritime jurisdiction, which focuses on the location of the contract rather than its nature, and the hypothecation requirement, *i.e.*, that one suing on a maritime contract have a hypothecation (a lien interest) in the vessel. To see the decision in proper perspective, therefore, requires a brief look at *Minturn*'s historical antecedents.

1. a. In England, during the early Middle Ages, maritime matters were dealt with by courts in English port towns. By the mid-fourteenth century, however, English maritime supremacy and the need for an efficient means to adjudicate maritime disputes led to the creation of the High Court of Admiralty, a maritime tribunal with broad powers.[7] Almost from its creation, this tribunal was unpopular with the local courts in the port towns, prompting Parliament to enact two famous statutes narrowing admiralty's jurisdiction. In the first of these statutes, 13 Rich. II, ch. 5 (1390), Parliament declared that "the admirals and their deputies shall not meddle from henceforth with anything done within the realm, but only of a thing done upon the sea * * *." In the second statute, 15 Rich. II, ch. 3 (1392), admiralty's jurisdiction was restricted with more particularity: "of all manner of contracts, pleas, and quarrels, and all other things rising within the bodies

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[7] According to one writer, the court's jurisdiction included "torts and offenses on the high seas, on British seas, and in ports within the ebb and flow of the tide, matters of prize, * * *, and causes arising on the seashore and in ports." D. Robertson, *Admiralty and Federalism* 40 (1970), quoting Mears, *The History of Admiralty Jurisdiction*, 2 Select Essays in *Anglo-American Legal History*, 312, 328-329 (1908).

of the counties, as well as by land as by water, and also of wreck of the sea, the Admiral's court shall have no manner of cognizance, power, nor jurisdiction."

Over the years, the common law courts continued their efforts "to prevent the admiralty court taking cognizance of contracts made in the country relating to maritime matters." D. Robertson, *Admiralty and Federalism* 42 (1970), quoting Mears, *The History of Admiralty Jurisdiction*, 2 Select Essays in *Anglo-American Legal History* 312, 335 (1908). For example (*id.* at 49-50):

> Starting about 1544, prohibitions began to be used against admiralty with increasing frequency. The great majority of cases involving the use of that writ were cases of maritime contracts made on land. The statutes of Richard II * * * were interpreted literally, in order to oust the admiral of jurisdiction over any case involving a contract made within the body of a county (*infra corpus comitatus*). Thus, charterparties, policies of insurance, and other clearly maritime contracts were held not within the admiralty jurisdiction.

During the reigns of the Tudor kings, the Admiralty Court was revived and enhanced, but it again came under attack from the champions of the common law courts—notably Sir Edward Coke. As one commentator noted, "[i]mmediately upon assuming the chief justiceship of the Court of Common Pleas in 1606, Coke enthusiastically took up the battle against admiralty * * *. During his years on the bench, Coke's militancy against the admiralty led him to deny its jurisdiction over any matters having connection with the land." D. Robertson, *supra*, at 55, 56.

One manifestation of Coke's approach was the tidewater doctrine, which provided that admiralty courts had jurisdiction only over matters taking place on the high seas and within the ebb and flow of the tides. Any action on land, or on inland nontidal waters, was therefore deemed to be outside admiralty's jurisdiction. See, E. Coke, *The Fourth Part of the Institutes of the Laws of England Concerning the Jurisdiction of the Courts* 137 (6th ed.) (London 1681); D. Robertson, *supra*, at 56-58; *De Lovio* v. *Boit*, 7 F. Cas. at 421.[8]

b. Article 3, Section 2 of the Constitution extends the judicial power of the United States "to all Cases of admiralty and maritime jurisdiction." Several early decisions of this Court—apparently assuming that this grant was limited by the English practice—relied on the tidewater doctrine in refusing to assert admiralty jurisdiction over contracts whose subject matter was maritime but whose locus was on land. *The Steamboat Thomas Jefferson*, 23 U.S. (10 Wheat.) 428, 429 (1825); *Pevroux* v. *Howard*, 32 U.S. (7 Pet.) 324, 343 (1833); *The Steamboat Orleans* v. *Phoebus*, 36 U.S. (11 Pet.) 175 (1837); *United States* v. *Coombs*, 37 U.S. (12 Pet.) 72, 76 (1837). Cf. *New Jersey Steam Navigation Co.* v. *Merchant's Bank*, 47 U.S. (6 How.) 343, 392 (1848).[9] But see *De Lovio* v. *Boit*, 7 F. Cas. at 444 (Story, J.).

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[8] As the Court explained in *Grant* v. *Poillon*, 61 U.S. (20 How.) 162, 168 (1857), under the tidewater doctrine "contracts upon land, though to be executed on the sea, and contracts at sea, if to be executed on the land, are not cognizable by the English admiralty."

[9] The acceptance of the tidewater doctrine may have been in part due to a desire not to interfere with state court juris-

In the mid-nineteenth century, this Court rejected the view that the constitutional grant of admiralty jurisdiction to the federal courts adopted the limitations on the English admiralty courts (*Waring* v. *Clark*, 46 U.S. (5 How.) 440, 454-459 (1847)), and in 1851 the Court specifically rejected the applicability of the tidewater doctrine, noting "the unreasonableness of giving a construction to the Consituation which would measure the jurisdiction of the admiralty by the tide." *The Propeller Genesee Chief* v. *Fitzhugh*, 53 U.S. (12 How.) 443, 456 (1851). See *Hine* v. *Trevor*, 71 U.S. (4 Wall.) 555, 566 (1866) ("*The Genesee Chief* * * * removed the imaginary line of tide-water which had been supposed to circumscribe the jurisdiction of the admiralty courts").

Minturn was decided four years after *The Genesee Chief* and did not expressly refer to the tidewater doctrine. Nevertheless, the statement that "there is nothing in the nature of a maritime contract in the case," (58 U.S. at 477) may suggest that the decision has its roots in that doctrine; the contract was not "in the nature of a maritime contract" because the reach of admiralty ended at the tideline, so that

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diction. Chancellor Kent observed (1 J. Kent, *Commentaries* 372 (12th ed. 1873))

> If the admiralty and maritime jurisdiction of the district courts embrace all maritime contracts, then suits upon policies of insurance, charter-parties, martime hypothecations, contracts for building, repairing, supplying, and navigating ships, and contracts between part owners of ships, must be tried in the admiralty by a single judge, to the exclusion of the trial by jury; and the state courts would be divested, at one stroke, of a vast field of commercial jurisdiction.

the contract at issue, which was executed on land, was outside admiralty's jurisdiction.[10]

2. *Minturn* also may reflect another 19th century exception to admiralty jurisdiction—the hypothecation requirement. At the time *Minturn* was decided, it was deemed necessary for one claiming under a contract to have a lien interest in a vessel before the contract would be considered maritime.[11] And a ship's agent (the so-called "ship's husband") was not entitled to a lien. See I. Parsons, *A Treatise on Maritime Law* 100 n.3 (1859); *The Raleigh*, 32 F. 633, 634 (S.D.N.Y. 1887); *The J.C. Williams*, 15 F. 558, 559 (S.D.N.Y. 1883).[12]

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[10] As Professor Moore has noted, "some remnant of the restrictive English mentality regarding the admiralty appears to have been present in the minds of the court that decided the early cases." 7A J. Moore & A. Palaez, *Moore's Federal Practice* ¶ .250, at 3004-3005 n.10 (2d ed. 1988). Indeed, "[o]nly by applying a location test [*i.e.*, the tidewater doctrine] could it be convincingly stated that agreements to procure charters, to arrange contracts or maritime affreightment, and to arrange for or oversee the numerous other necessary activities often delegated to brokers and agents are not directly related to maritime commerce." *Id.* at 3004-3005.

[11] See *Gardner* v. *The New Jersey*, 9 F. Cas. 1192, 1195 (D. Pa. 1806) (No. 5233); Note, *General Agency Agreements and Admiralty Jurisdiction*, 17 Conn. L. Rev. 595, 597-598 (1985).

[12] At the time *Minturn* was decided, the ship's husband was usually a part owner. See *Gould* v. *Stanton*, 16 Conn. 12, 23 (1843); I. Parsons, *A Treatise on Maritime Law* 97 (1859); G. Abbott, *Treatise of the Law Relative to Merchant Ships and Seamen* 136 (5th American ed. 1846). The rationale for denying the lien was that a part owner acting as ship's husband dealt on the credit of his fellow owners, not the credit of the vessel. It was thus generally accepted that "admiralty has no jurisdiction at all in matters of account be-

In its short opinion, the Court in *Minturn* noted the absence of a lien: "the local law of California, which authorizes an attachment of vessels for supplies or repairs, [does not] extend to the balance of accounts between agent and principal, who have never dealt on the credit, pledge, or security of the vessel." 58 U.S. at 477. As one commentator has observed, "[t]he Court's refusal to find that the contract was maritime seems comprehensible only if *Minturn* is taken to represent the then-common line of cases that advocated the necessity of a lien interest against a vessel in all maritime contracts. The Court apparently reasoned that the agent could not assert a lien against a ship under any circumstances and therefore that the contract could never be maritime." See Note, *General Agency Agreements and Admiralty Jurisdiction*, 17 Conn. L. Rev. 595, 604 (1985).

Like the tidewater doctrine, the hypothecation requirement has long been abolished. In *Insurance Co* v. *Dunham*, 78 U.S. (11 Wall.) 1 (1870), the Court held that a contract may be maritime, and give rise to a right to sue on the contract in personam, even when the contract does not create a lien. As the Court explained (*id.* at 26), "the true criterion is the nature and subject-matter of the contract, as

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tween part-owners." *The Steamboat Orleans* v. *Phoebus*, 36 U.S. at 182; cf. *Davis* v. *Child*, 7 F. Cas. 112, 116-117 (D. Me. 1840) (No. 3628).

When the Court in *Minturn* was faced with an action for an accounting brought by a general agent against a vessel's owners, it may have appeared that the controversy was one between co-owners seeking an accounting. In fact, however, Minturn was not a co-owner of the vessel. See Note, *supra*, at n.31 citing *Minturn* Supreme Court Record at 3. Thus, the *Minturn* Court may have based its conclusion on an assumption not supported by the facts.

whether it was a maritime contract, having reference to maritime service or maritime transactions." Subsequent decisions have confirmed that admiralty jurisdiction in the United States is not limited by any hypothecation requirement. See, *e.g.*, *North Pacific S.S. Co.* v. *Hall Bros. Marine Ry. & Shipbuilding Co.*, 249 U.S. 119, 126 (1919); *Detroit Trust Co.* v. *The Barlum*, 293 U.S. 21, 47 (1934).

3. Finally, *Minturn* may have turned on the Court's observation (58 U.S. at 477) that the case involved "nothing but a demand for a balance of accounts between agent and principal, for which an action in *assumpsit*, in a common law court, is the proper remedy." This limitation on admiralty jurisdiction has also been disavowed, albeit somewhat more recently than those previously discussed. In *Archawski* v. *Hanioti*, 350 U.S. 532, 536 (1956), the Court rejected the argument that an action in assumpsit automatically puts the case beyond the reach of a court sitting in admiralty: "It is sufficient this day to hold that admiralty has jurisdiction, even where the libel reads like *indebitatus assumpsit* at common law, provided that the unjust enrichment arose as a result of the breach of a maritime contract."

In short, *Minturn* rests on restrictions upon admiralty jurisdiction that this Court has squarely rejected. See, *e.g.*, 7A J. Moore & A. Palaez, *Moore's Federal Practice* ¶ .250, at 3004-3005 (2d ed. 1988). Yet, the case remains as precedent and has been cited (at least by the Second Circuit) as controlling authority for the broad proposition that general agency contracts are outside admiralty's jurisdiction. Pet. App. A11-A16, A31; accord *Peralta Shipping Corp.* v. *Smith & Johnson (Shipping) Corp.*, 739 F.2d 798, 802-804 (1984), cert. denied, 470 U.S. 1031 (1985);

Admiralty Oriental Line v. *Atlantic Gulf & Oriental S.S. Co.*, 88 F.2d 26, 27 (1937). Cf. *Ingersoll Milling Mach. Co.* v. *M/V Bodena*, 829 F.2d 293, 301-302, cert. denied, 484 U.S. 1042 (1987); *Cory Bros. & Co.* v. *United States*, 51 F.2d 1010, 1012 (1931). *Minturn*'s agency rule is thus like the divided damages rule this Court abrogated more than a decade ago: "The reasons that originally led to the Court's adoption of the rule have long since disappeared." *United States* v. *Reliable Transfer Co.*, 421 U.S. 397, 410 (1975).

B. Overruling *Minturn* Would Be In Keeping With Efforts To Rationalize The Scope Of Federal Admiralty Jurisdiction

The commentators are in broad agreement that "[general agency] agreements are an integral part of, and in furtherance of, maritime commerce and, consequently, should be cognizable within the admiralty jurisdiction of the district court." 7A J. Moore & A. Palaez, *Moore's Federal Practice* ¶ .250 at 3006 (2d ed. 1988); accord G. Gilmore & C. Black, *The Law of Admiralty* 28 n.94b (2d ed. 1975); S. Friedell, *Benedict on Admiralty* § 183, at 12-9 (7th ed. 1989). This conclusion is consistent with the goal of uniformity underlying the grant of admiralty jurisdiction to the federal courts, and with the continuing trend toward rationalizing the scope of that jurisdiction.

A primary basis for the establishment of federal admiralty jurisdiction was the need for a uniform national law. *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 160 (1920); 3 *Elliot's Debates on the Federal Constitution* 352, 571 (2d ed. 1836); *Sisson* v. *Ruby*, 110 S. Ct. at 2898. Yet, as Justice Blackmun, joined by Justice Marshall, noted in dissenting from the denial of certiorari in *Peralta* (470 U.S. at 1031-

1032), *Minturn* is an exception to admiralty jurisdiction "that has been applied inconsistently and that has created unnecessary confusion in the federal courts." Since "uniformity and predictability in the maritime industry were the ends sought in the Constitution when federal-court maritime jurisdiction was created in the first instance," this inconsistency is particularly inappropriate in the admiralty context (*id.* at 1034).

The inconsistencies in the interpretation of *Minturn* are pervasive. As the district court noted, Pet. App. A11-A12, A29-A31, the Second Circuit remains committed to the view that, under *Minturn*, agency agreements are excluded from admiralty jurisdiction. Although the Second Circuit has stated that it would "welcome" *Minturn*'s overruling (*Peralta*, 739 F.2d at 804), it has rejected a variety of distinctions that limit the impact of *Minturn* in other circuits, noting that "such hair-splitting distinctions would blur, if not obliterate, a rather clear admiralty demarcation" (*ibid.*).

The Fifth Circuit has taken a diametrically different approach, refusing to recognize any general rule excluding agency agreements from admiralty jurisdiction. In *Hadjipateras* v. *Pacifica, S.A.*, 290 F.2d 697, 703 (1961), the Fifth Circuit held that an action for breach of an agency contract for the management and operation of a vessel is within the admiralty jurisdiction, since "the contract is everything classically known as a martime contract. It concerns a ship. It relates not only to a ship; its very purpose is to effectuate the physical, economic operation and employment of a vessel." In so holding, the court observed that *Minturn* presumably forecloses admiralty jurisdiction over an action for "an accounting as such" (290 F.2d at 704 & n.15, noting "doubts * * *

cast" on this restriction by cases such as *Archawski* v. *Hanioti*, *supra*).

Similarly, the Ninth Circuit, in *Hinkins Steamship Agency* v. *Freighters, Inc.*, 498 F.2d 411, 412 (1974), questioned *Minturn's* continued vitality, and found the agency agreement at issue there to be a maritime contract. The Ninth Circuit emphasized that although the husbanding agent had "*procured* [maritime services] and did not perform them directly, * * * [the fact that] their performance was its direct responsibility, that the services were clearly maritime and necessary for the continuing voyage, and that [the agent] was directly engaged in supervision, makes [the service] maritime and the contract sued upon a maritime contract"—particularly since the agreement was limited to a specific voyage and "there was repeated attendance on board the vessel" by the agent. *Id.* at 412.

The circuits, therefore, are clearly in disagreement about the application of *Minturn* and the continued vitality of its holding. While some courts have strained to reconcile the disparate holdings, see *E.S. Binnings, Inc.* v. *M/V Saudi Riyadh*, 815 F.2d 660, 664 (11th Cir. 1987), the decisions appear in large measure to be irreconcilable. For instance, the Second Circuit in *Admiralty Oriental Line* v. *Atlantic Gulf & Oriental S.S. Co.*, *supra*, ruled that a "managing operator" agency contract was not within admiralty jurisdiction, but the Ninth Circuit in *Hinkins* reached a contrary result, precisely because the contract before it provided for direct management services. See *Peralta*, 739 F.2d at 804.

In addition, the circuits are at odds over whether the status of "special agent" removes the bar of the

Minturn rule.[13] In *Hinkins*, the agent had responsibility for only a specific voyage, and thus no long-term relationship with the owner. The Ninth Circuit found that admiralty jurisdiction could be invoked, presumably since the duties involved were those most usually carried out by a special agent, rather than a general agent. Similarly, in *Ameejee Valleejee Sons* v. *M/V Victoria U.*, 661 F.2d 310, 312 (4th Cir. 1981), the court stated that while a general agent cannot invoke admiralty jurisdiction, a special agent can. The court found it difficult to formulate a test for general agency, however, and observed that the Federal Maritime Lien Act had "somewhat impaired if not eliminated" the rule that the enforcement of contracts by general agents falls outside admiralty's jurisdiction. See also *Compagnia Maritima La Empresa, S.A.* v. *Pickard*, 320 F.2d 829 (5th Cir. 1963) (appearing to distinguish a general agent from a special agent); *The Eurana*, 1 F.2d 684, 685 (3d Cir. 1924) (suggesting that a lien would be available to a special agent, but not to a general agent). On the other hand, the Second Circuit, in *Peralta* (739 F.2d at 803-804), refused to "subdivid[e] the category of general agency contracts based on the degree of importance of the services rendered by the agent or on the extent of supervision of performance," and criticized the *Hinkins* distinction between general and special agency agreements (739 F.2d at 803 n.4). Accord *Continental Cameras Co.* v. *FOA & Son Corp.*, 658 F. Supp. 287, 289

[13] "A special agency properly exists, when there is a delegation of authority to do a single act; a general agency properly exists where there is a delegation to do all acts acts connected with a particular trade, business, or employment." J. Story, *Commentaries On The Law Of Agency* § 17 (9th ed. 1982).

(S.D.N.Y.), aff'd, 831 F.2d 45 (2d Cir. 1987); Pet. App. A13-A16.[14]

Minturn warrants reconsideration not only because of the confusion concerning its scope, but also in light of the trend during the past century and a half to eliminate archaic restrictions on admiralty jurisdiction. Both Congress and this Court have participated in the process of rationalization. Congress has enacted a series of liberalizing statutes beginning in 1884,[15] and this Court has repeatedly overturned ear-

[14] The Second Circuit has cited *Hinkins* with approval, however, in concluding that "[t]he preparation and processing of export declarations, delivery orders, dock receipts, bills of lading and advance notification of shipment are not services rendered preliminary to a voyage[,] rather they are essential to it," and that, accordingly, a freight forwarder who carries out these functions may sue in admiralty. *Ingersoll Milling Mach. Co.* v. *M/V Bodena*, 829 F.2d 293, 302-303, cert. denied, 484 U.S. 1042 (1987).

[15] In *Detroit Trust Co.* v. *The Barlum*, 293 U.S. at 43-44, this Court recognized that Congress has the power to define the precise scope of the constitutional grant of admiralty jurisdiction to the federal courts, even if that definition expands the limits of that jurisdiction, so long as the grant remains within the purposes and general understanding of the concept. Congress has acted on that authority. See, *e.g.*, Act of June 26, 1884, ch. 121, § 18, 23 Stat. 57-58, as interpreted by the Court in *Richardson* v. *Harmon*, 222 U.S. 96, 101-102 (1911) (extending admiralty jurisdiction to include damages by a vessel to a land structure); the Federal Maritime Lien Act of 1910, ch. 373, 36 Stat. 604, and the Act of June 5, 1920, ch. 250, 41 Stat. 1005 (permitting a person providing necessaries for a vessel on the order of the owner to assert a maritime lien on the vessel, and to bring a civil action in rem to enforce the lien, without proving that credit was given to the vessel); the Death on the High Seas Act of 1920, ch. 111, 41 Stat. 537 (giving admiralty jurisdiction over suits for damages for death caused by a wrongful act on the high seas); the Merchant Marine Act of 1920, ch. 250, 41 Stat. 1007 (incorporating into the maritime law rules drawn from the Federal Employers Liability Act); the Longshoremen's and Harbor Workers' Compensation Act of 1927, ch. 509, 44 Stat. 1424; the Admiralty Jurisdiction Extension Act of 1948, ch. 526, 62 Stat. 496 (extending admiralty jurisdiction to damages to person or property on land caused by vessel on navigable water); Act of Nov. 23, 1988, Pub. L. No. 100-711, 102 Stat. 4735 (revising ship mortgage and lien laws to simplify administration of those laws, "to make [them] less cumbersome for the maritime community, and to make [them] more understandable for everyone involved." H.R. Rep. No. 918, 100th Cong., 2d Sess. 1 (1988)).

lier doctrines that are inconsistent with the principle that admiralty jurisdiction extends generally to transactions "related to ships and vessels, masters and mariners as agents of commerce" *Kossick* v. *United Fruit Co.*, 365 U.S. at 736.[16] See *United States* v. *Reliable Transfer Co.*, 421 U.S. at 409 (noting that "Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law.").

Minturn is just such a relic of archaic doctrine. Whether or not a contract is to be considered maritime, and thus within the admiralty jurisdiction of the federal courts, should not turn simply on whether or not the contract is one of agency. Indeed, the conclusion that general agency contracts are not within

[16] *E.g.*, *The Propeller Genesee Chief*, 53 U.S. (12 How.) 443 (1851) (rejecting tidewater doctrine); *Insurance Co.* v. *Dunham*, 78 U.S. (11 Wall.) 1 (1870) (constitutional grant of admiralty jurisdiction not limited by restrictive English precedents); *Archawski* v. *Hanioti*, 350 U.S. at 536 (admiralty jurisdiction extends to quasi-contract claim for unjust enrichment, "even where the libel reads like *indebitatus assumpsit* at common law"). Cf. *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249, 268 (1972) (no admiralty jurisdiction where tort had no "significant relationship to traditional maritime activity").

admiralty jurisdiction appears inconsistent with the broad terms of the Federal Maritime Lien Act, which provides (46 U.S.C. 31342):

> [a] person providing necessaries to a vessel * * * (1) has a maritime lien on the vessel; (2) may bring a civil action in rem to enforce the lien; and (3) is not required to allege or prove in the action that credit was given to the vessel.

The district court rejected the applicability of the Federal Maritime Lien Act on the ground that it did not extend the bounds of admiralty jurisdiction (Pet. App. A26-A28). It seems equally appropriate to conclude, however, that the Act reflects the current view of the scope of admiralty, and that *Minturn* is simply an outmoded reflection of an earlier, more limited view of that jurisdiction.

Nor do we believe that any settled expectations require adherence to *Minturn*. In the first place, even assuming universal agreement on the meaning of that decision, it is hard to see precisely what justified reliance interests will be undermined if *Minturn* is overruled. Second, and more important, there is no such universal agreement, and thus continuance of the *Minturn* precedent can only lead to uncertainty in some instances, and forum shopping in others.

II. THE PRESENT CASE FALLS WITHIN THE ADMIRALTY JURISDICTION OF THE DISTRICT COURT

If, as we suggest, the Court determines that *Minturn* should be overruled and that agency agreements are not per se excluded from the scope of admiralty jurisdiction, the question will remain whether particular agency agreements fall within that jurisdiction. As the district court noted (Pet. App. A16-

A17), some contracts are sufficiently remote from maritime commerce, and so much a part of regular domestic commerce, that they are regarded as "preliminary" and beyond the reach of admiralty jurisdiction. A contract to sell timber to a shipbuilder, for example, is well-removed from the affairs of maritime commerce. Cf. *The Thames*, 10 F. 848 (S.D.N.Y. 1881) (broker who procured a charter party has no lien on a vessel); note 3, *supra*.

In the present case, the district court regarded the *Minturn* rule as a subset of the rule excluding preliminary contracts from the scope of admiralty. Pet. App. A16-A17. It therefore might be appropriate, once that ground of decision has been rejected, to remand the case for determination of the question whether this particular agency contract is "preliminary" in nature.

But in our view, no such remand is required on the facts presented. The marine fuel supplied to the ship was clearly "necessary" to the ship's operation.[17] Moreover, petitioner did not simply arrange for the sale of fuel by Arabian Marine to Waterman; rather, petitioner paid Arabian Marine for the fuel and seeks reimbursement for that payment here.[18] Thus, what-

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[17] Cf. the Federal Martime Lien Act, 46 U.S.C. 31342, p. 24, *supra*, which provides for a maritime lien for a person supplying "necessaries" to a vessel. The term "necessaries" includes "supplies which are necessary to keep the ship going." *Dampskibsselskabet* v. *Signal Oil & Gas Co.*, 310 U.S. 268, 280 (1940) (fuel oil); *Tramp Oil & Marine Ltd.* v. *M/V Mermaid I*, 630 F. Supp. 630, 632 (D.P.R.), aff'd, 805 F.2d 42, 44 (1st Cir. 1986) (same).

[18] Even before the enactment of the Federal Maritime Lien Act, an action to recover money owed for the supply of fuel to a vessel in a foreign port would have been deemed within admiralty's jurisdiction. See, *e.g.*, Supreme Court Rule 12,

ever the limits of admiralty jurisdiction with respect to agency agreements, those limits are not approached in this case.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted.

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80 U.S. (13 Wall.) xiv (1872); *The J.E. Rumbell*, 148 U.S. 1, 12 (1893); J. Moore & A. Palaez, *Moore's Federal Practice* ¶ .230 [4.-5], at 2853, (citing *Martran S.S. Co.* v. *Aegean Tankers Ltd.*, 170 F. Supp. 477, 479 (S.D.N.Y. 1959)). Cf. S. Friedell, *Benedict on Admiralty* § 36 (7th ed. 1989) ("In the older codes of Continental Europe, the concept of [the materialman's lien] existed although it was not definitely defined. Under this law, the lien was given unqualifiedly to the furnisher of necessaries, and it made no difference who he was, or where or how the necessaries were obtained.").

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